

Amendment No. 1 to HB2145

Fowlkes
Signature of Sponsor

AMEND Senate Bill No. 2088

House Bill No. 2145*

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 70-7-101, is amended by deleting the section in its entirety and substituting instead the following:

Section 70-7-101. As used in this chapter, unless the context otherwise requires:

(1) "Consideration" means a price or fee paid for services, entertainment, education or recreation performed, or products offered for sale, on land or in return for an invitation or permission to enter upon land;

(2) "Consideration" does not include:

(A) In-kind payments for use of the land such as permitting the landowner to use other land for similar purposes;

(B) Bartering for use of the land by performing on the land on which the educational or recreational activity occurs irregular maintenance such as grass cutting, bush-hogging, fence repair or the construction or maintenance of small structures involved in the activity such as duck blinds or deer stands, provided such structures are not permanent in nature and do not require a building permit;

(C) Providing warnings, such as signs, of hazards on, or remove hazards from the land used for educational or recreational purposes; or

(D) The payment of property taxes on no more than one hundred (100) acres of the land on which the educational or

recreational purpose is conducted provided such payment shall not include the tax on any dwelling on or improvements to such land.

(3) "Educational purpose" means any lawful activity undertaken as part of a formal or informal educational program or otherwise undertaken for the purpose of viewing, studying or researching historical, natural, archaeological, or scientific sites;

(4) "Land" means privately owned agricultural, forest or undeveloped real property and water used for recreational or educational purposes;

(5) "Land" does not include any dwelling or any property immediately surrounding such dwelling that is generally used for activities associated with occupancy of the dwelling as a living space or any improvements erected on the dwelling or immediately surrounding property for recreational purposes that, include, but are not limited to, swimming pools, tennis or badminton courts, barbecue or horse shoe pits, jacuzzis, hot tubs or saunas;

(6) "Landowner" means the legal title holder or owner of the land to be used for educational or recreational purposes, or the person legally entitled to immediate possession thereof;

(7) "Landowner" does not include a person who charges consideration for permitting such person's land to be used for educational or recreational purposes.

(8) "Recreational purpose" means any lawful activity undertaken for the purpose of recreation, exercise, relaxation, refreshment, diversion, or pleasure and shall include but not be limited to hunting, fishing, trapping, camping, water sports, white water rafting, canoeing, hiking, sightseeing, animal riding, bird watching, dog training, boating, caving,

fruit and vegetable picking for the participant's own use, rock climbing, skeet and trap shooting, skiing, off-road vehicle riding, and cutting or removing wood for the participant's own use.

SECTION 2. Tennessee Code Annotated, Section 70-7-102, is amended by deleting the section in its entirety and substituting instead the following:

Section 70-7-102. A landowner, or such landowner's agent, who gives permission to another person to enter or use land for recreational or educational purposes owes no duty of care to keep such land safe for entry or use by others for these purposes, nor shall such landowner be required to give any warning of hazardous conditions, uses of, structures, or activities on such land to any person entering such land for recreational or educational purposes, except as provided in § 70-7-104.

SECTION 3. Tennessee Code Annotated, Section 70-7-103, is amended by deleting the section in its entirety and substituting instead the following:

Section 70-7-103. A landowner, or such landowner's agent, who gives permission to another person to enter or use land for recreational or educational purposes does not thereby:

- (a) Extend any assurance that the land is safe for such purposes;
- (b) Confer upon the person to whom permission has been granted the legal status of a person to whom a duty of care is owed; or
- (c) Assume responsibility for or incur liability for any injury to such person or purposely caused by any act of such person to whom permission has been granted except as provided in § 70-7-104

SECTION 4. Tennessee Code Annotated, Section 70-7-104, is amended by deleting the section in its entirety and substituting instead the following:

Section 70-7-104. This part does not limit the liability which otherwise exists for:

- (a) Gross negligence, willful or wanton conduct which results in a failure to guard or warn against a dangerous condition, use, structure or activity;

(b) Injuries suffered in any case where permission to enter or use the land for recreational or educational purposes was granted for a consideration; or

(c) Injuries to third persons or to persons to whom the landowner owed a duty to keep the land safe or to warn of danger that are caused by acts of persons to whom permission to enter or use the land for recreational or educational purposes was granted;

SECTION 5. Tennessee Code Annotated, Section 70-7-105, is amended by deleting the section in its entirety and substituting instead the following:

Section 70-7-105. Nothing in this part shall be construed as prohibiting a landowner, who charges consideration for permission to use or enter land, from requiring a person to sign a waiver of liability when such landowner allows such person to use the landowner's land for a recreational or educational purpose . The language of such waiver shall be plain, complete and unambiguous. Such a waiver shall not operate to limit the landowner's liability for gross negligence, or willful or wanton conduct, or for a failure to guard or warn against a dangerous condition, use, structure or activity.

SECTION 6. This act shall take effect July 1, 2004, the public welfare requiring it.